

Remarks

Reconsideration of this Application is respectfully requested.

Claims 1, 3-6, 8-12, 15 and 16 are pending in the application, with claims 1, 6, 11 and 12 being the independent claims. Claims 2, 7, 13 and 14 were previously canceled. No new matter has been added.

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 103

Claims 1, 3-6, 8-12, 15, and 16

In section 2 of the Office Action, claims 1, 3-6, 8-12, 15 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,438,123 to Chapman (hereinafter "Chapman") in view of U.S. Patent No. 6,510,162 to Fijolek *et al.* (hereinafter "Fijolek"). Applicants respectfully traverse this rejection.

The Office Action fails to establish a *prima facie* case of obviousness for at least the reason that Chapman and Fijolek, alone or in any combination, fail to teach each and every feature of the claimed invention. M.P.E.P. § 2143.

Independent claim 1 recites, among other features, a cable modem that is adapted to append a unique hardware address of the headend server to the modified data packets and to transfer the modified data packets to the cable modem termination system. It appears that the Office Action relies on Fijolek to allegedly teach this feature. Referring to Fijolek, the Office Action alleges, "It is inherent that data transferred from the CMTS to the server contain a unique address for the server

equipment." Office Action, p. 3. However, nothing in Fijolek even suggests that a cable modem is adapted to append a unique hardware address of the headend server to the modified data packets and to transfer the modified data packets to the cable modem termination system, as set forth in Applicants' claim 1.

In Fijolek, data-over-cable system 10 is shown to include a cable modem 16. Cable modem 16 forwards IP datagrams destined to an IP unicast or multicast address across cable network 15 or PSTN 22. Fijolek, Col. 8, lines 8-26. "A cable modem 16 that wants to send a multicast packet across a virtual tunnel will prepend another IP header, set the destination address in the new header to be the unicast address of CMTS 12 at the other end of the tunnel, and set the IP protocol field to be four, which means the next protocol is IP." Fijolek, Col. 8, lines 30-35. "CMTS 12 at the other end of the virtual tunnel receives the packet, strips off the encapsulating IP header, and forwardsd the packet as appropriate." Fijolek, Col. 8, lines 36-38. However, nowhere does Fijolek teach or suggest that cable modem 16 is adapted to append a unique hardware address of the headend server to the modified data packets and to transfer the modified data packets to the cable modem termination system, as suggested in the Office Action.

Moreover, "[i]nherency may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." *Hansgirk v. Kemmer*, 40 U.S.P.Q. 665, 667 (C.C.P.A. 1939); *In re Olerich and Divigard*, 212 U.S. P.Q. 323, 326 (C.C.P.A. 1981). Accordingly, the Examiner's inherency allegation amounts to a suggestion that cable modem 16 in Fijolek must necessarily append a unique hardware address of

server 25 to the data that CMTS 12 allegedly transfers to server 25. Applicants respectfully disagree with the Examiner's suggestion.

First, Applicants are unable to find a statement in Fijolek that supports the Examiner's assumption that data is communicated from CMTS 12 to server 25. For example, Fijolek merely states that the network administrator 110 in server 25 analyzes channel usage, organizes the CMs 16 in clusters of a predetermined size, and may identify a multicast address for each cluster defined in the cable system 10. Fijolek, abstract and Col. 16, lines 52-67. Thus, it appears that server 25 performs channel usage management without the need for CMTS 12 to communicate data to server 25. Second, even if, *arguendo*, data is communicated from CMTS 12 to server 25, cable modem 16 need not necessarily append a unique hardware address of server 25 to the data that CMTS 12 transfers to server 25. Accordingly, Applicants assert that it is not inherent that cable modem 16 in Fijolek would append a unique hardware address of server 25 to data that CMTS 12 allegedly transfers to server 25, as suggested in the Office Action.

Moreover, Applicants assert that Chapman does not provide the teachings that are missing from Fijolek.

Thus, Applicants assert that Chapman and Fijolek, alone or in any combination, do not teach or suggest a cable modem that is adapted to append a unique hardware address of the headend server to the modified data packets, as set forth in Applicants' claim 1. For at least these reasons, Applicants assert that independent claim 1 is patentable over Chapman and Fijolek, alone or in any combination.

Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1.

Moreover, claims 3-5, which depend from independent claim 1, also distinguish over Chapman and Fijolek, alone or in any combination, for reasons similar to those set forth above with respect to independent claim 1, and further in view of their own respective features.

Independent claim 6 recites, among other features, a cable modem termination system that is adapted to receive the data packets and to transfer the data packets to the headend server in accordance with a unique hardware address of the headend server that is appended to the data packets, wherein the headend server is adapted to modify the format of the data packets in accordance with the non-DOCSIS-compliant data transfer protocol and to transfer the modified data packets to the network.

Applicants assert that independent claim 6 is patentable over Chapman and Fijolek, alone or in any combination, for reasons similar to those set forth above with respect to independent claim 1, and further in view of its own features.

Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 6.

Furthermore, claims 8-10, which depend from independent claim 6, also distinguish over Chapman and Fijolek, alone or in any combination, for reasons similar to those set forth above with respect to independent claim 6, and further in view of their own respective features.

Independent claim 11 recites, among other feature, a cable modem that is adapted to receive data packets from the user device, to modify the contents of the

data packets in accordance with a non-DOCSIS-compliant data transfer protocol, to append a unique hardware address of the headend server to the modified data packets, and to transfer the modified data packets to the cable modem termination system.

Applicants assert that independent claim 11 is patentable over Chapman and Fijolek, alone or in any combination, for reasons similar to those set forth above with respect to independent claim 1, and further in view of its own features.

Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 11.

Independent claim 12 recites, among other features, appending a unique hardware address of a headend server to the modified data packets, wherein the cable modem termination system is adapted to transfer the modified data packets to the headend server in accordance with the unique hardware address, and wherein the headend server is adapted to restore the contents of the modified data packets to an unmodified state and transfer the restored data packets to a network.

Applicants assert that independent claim 12 is patentable over Chapman and Fijolek, alone or in any combination, for reasons similar to those set forth above with respect to independent claim 1, and further in view of its own features.

Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 12.

Moreover, claims 15 and 16, which depend from independent claim 12, also distinguish over Chapman and Fijolek, alone or in any combination, for reasons similar to those set forth above with respect to independent claim 12, and further in view of their own respective features.

Other Matters

Applicants acknowledge with appreciation the Examiner's consideration of the non-patent literature document listed in the Second Supplemental Information Disclosure Statement filed 8/24/06.

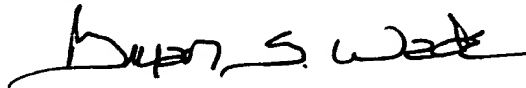
Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Reply is respectfully requested.

Respectfully submitted,

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